

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JERMAINE D. OLIVER, #188519,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:16-CV-248-WHA
)	(WO)
)	
ELIZABETH LASETER, et al.,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

I. INTRODUCTION¹

This 42 U.S.C. § 1983 action is pending before the court on a complaint filed by Jermaine D. Oliver, a state inmate, challenging the constitutionality of a disciplinary imposed upon him while incarcerated at the Bullock Correctional Facility. Specifically, Oliver alleges that the defendants denied him due process during a disciplinary hearing on a charge for unauthorized possession of a phone. Doc. 1 at 4–5. Oliver names Elizabeth Laseter, the hearing officer, and Jimmy Thomas, the arresting officer, as defendants in this cause of action. He seeks monetary damages for the alleged violation of his constitutional rights. Doc. 1 at 7.

The defendants filed a special report and relevant evidentiary materials in support of this report, including affidavits and prison records, addressing the due process claim

¹All documents and attendant page numbers cited herein are those assigned by the Clerk of this court in the docketing process.

presented by Oliver. In their report, the defendants deny acting in violation of Oliver's constitutional rights.

After reviewing the special report filed by the defendants, the court issued an order on May 23, 2016, directing Oliver to file a response to each of the arguments set forth by the defendants in their report, supported by affidavits or statements made under penalty of perjury and other evidentiary materials. Doc. 13 at 2. The order specifically cautioned that **“unless within fifteen (15) days from the date of this order a party ... presents sufficient legal cause why such action should not be undertaken ... the court may at any time [after expiration of the time for the plaintiff filing a response to this order] and without further notice to the parties (1) treat the special reports and any supporting evidentiary materials as a motion for summary judgment and (2) after considering any response as allowed by this order, rule on the motion for summary judgment in accordance with the law.”** Doc. 13 at 3. Oliver filed an unsworn and unsigned response to this order on June 10, 2016. Doc. 15.

Pursuant to the order entered on May 23, 2016, the court now treats the defendants' report as a motion for summary judgment and concludes that summary judgment is due to be granted in favor of the defendants.

II. SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine [dispute] as to any material fact and that the moving party is entitled to judgment

as a matter of law.” *Greenberg v. BellSouth Telecomm., Inc.*, 498 F.3d 1258, 1263 (11th Cir. 2007) (per curiam) (citation to former rule omitted); Rule 56(a), Fed.R.Civ. P. (“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”).² The party moving for summary judgment “always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the [record, including pleadings, discovery materials and affidavits], which it believes demonstrate the absence of a genuine [now dispute] of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Williamson Oil Company, Inc. v. Phillip Morris USA*, 346 F.3d 1287, 1298 (11th Cir. 2003) (holding that moving party bears the initial burden of establishing there is no genuine dispute as to any material fact); *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593 (11th Cir. 1995) (same). The movant may meet this burden by presenting evidence indicating there is no dispute of material fact or by demonstrating that the nonmoving party has failed to present appropriate evidence in support of some element of its case on which it bears the ultimate burden of proof. *Celotex*, 477 U.S. at 322–24. The moving party discharges his burden by showing that the record lacks evidence to support

²Although Rule 56 underwent stylistic changes in 2010, the revision of “[s]ubdivision (a) carries forward the summary-judgment standard expressed in former subdivision (c), changing only one word — genuine ‘issue’ becomes genuine ‘dispute.’ ‘Dispute’ better reflects the focus of a summary-judgment determination.” *Id.* “‘Shall’ is also restored to express the direction to grant summary judgment.” *Id.* Despite these changes, the substance of Rule 56 remains the same and, therefore, all cases citing prior versions of the rule remain equally applicable to the current rule.

the nonmoving party's case or that the nonmoving party would be unable to prove his case at trial. *Moton v. Cowart*, 631 F.3d 1337, 1341 (11th Cir. 2011)

When the defendants meet their evidentiary burden, as they have in this case, the burden shifts to the plaintiff to establish, with appropriate evidence beyond the pleadings, that a genuine dispute material to his case exists. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991); *Celotex*, 477 U.S. at 324; Fed.R.Civ.P. 56(e)(3) (“If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact by [citing to materials in the record including affidavits, relevant documents or other materials] the court may ... grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it.”). Once the moving party meets its burden, “the non-moving party must then go beyond the pleadings, and by its own affidavits [or sworn statements], or by depositions, answers to interrogatories, and admissions on file,” demonstrate that there is a genuine dispute of material fact. *Jeffery*, 64 F.3d at 593–94 (internal quotation marks omitted). This court will also consider “specific facts” pled in a plaintiff’s sworn complaint when considering his opposition to summary judgment. *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1098 (11th Cir. 2014). A genuine dispute of material fact exists when the nonmoving party produces evidence that would allow a reasonable fact-finder to return a verdict in its favor. *Greenberg*, 498 F.3d at 1263; *Allen v. Bd. of Public Education for Bibb County*, 495 F.3d 1306, 1313 (11th Cir. 2007). In civil actions filed by inmates, federal courts

must distinguish between evidence of disputed facts and disputed matters of professional judgment. In respect to the latter, our inferences must accord deference to the views of prison authorities. Unless a prisoner can point to sufficient evidence regarding such issues of judgment to allow him to prevail on the merits, he cannot prevail at the summary judgment stage.

Beard v. Banks, 548 U.S. 521, 530 (2006) (internal citation omitted).

To proceed beyond the summary judgment stage, an inmate-plaintiff is required to produce “sufficient [favorable] evidence” which would be admissible at trial supporting his claim of a constitutional violation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). “If the evidence [on which the nonmoving party relies] is merely colorable ... or is not significantly probative ... summary judgment may be granted.” *Anderson*, 477 U.S. at 249-250. “A mere ‘scintilla’ of evidence supporting the opposing party’s position will not suffice; there must be enough of a showing that the [trier of fact] could reasonably find for that party.” *Walker v. Darby*, 911 F.2d 1573, 1576–77 (11th Cir. 1990) (internal citation omitted). Conclusory allegations based on subjective beliefs are likewise insufficient to create a genuine dispute of material fact and, therefore, do not suffice to oppose a motion for summary judgment. *Holifield v. Reno*, 115 F.3d 1555, 1564 n.6 (11th Cir. 1997); *Harris v. Ostrout*, 65 F.3d 912, 916 (11th Cir. 1995) (holding that grant of summary judgment is appropriate where inmate produces nothing beyond “his own conclusory allegations” challenging actions of the defendants); *Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984) (“Mere verification of party’s own conclusory allegations is not sufficient to oppose summary judgment.”); *Evers v. General Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985) (“[C]onclusory allegations without specific supporting facts have

no probative value.”). Hence, when a plaintiff fails to set forth specific facts supported by requisite evidence sufficient to establish the existence of an element essential to his case and on which the plaintiff will bear the burden of proof at trial, summary judgment is due to be granted in favor of the moving party. *Celotex*, 477 U.S. at 322 (“[F]ailure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.”); *Barnes v. Southwest Forest Industries, Inc.*, 814 F.2d 607, 609 (11th Cir. 1987) (If on any part of the prima facie case the plaintiff presents insufficient evidence to require submission of the case to the trier of fact, granting of summary judgment is appropriate.); *Chapman v. AI Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000) (en banc) (holding that summary judgment is appropriate where no genuine dispute of material fact exists). At the summary judgment stage, this court must “consider all evidence in the record ... [including] pleadings, depositions, interrogatories, affidavits, etc. — and can only grant summary judgment if everything in the record demonstrates that no genuine [dispute] of material fact exists.” *Strickland v. Norfolk Southern Railway Co.*, 692 F.3d 1151, 1154 (11th Cir. 2012).

For summary judgment purposes, only disputes involving material facts are relevant. *United States v. One Piece of Real Property Located at 5800 SW 74th Avenue, Miami, Florida*, 363 F.3d 1099, 1101 (11th Cir. 2004). What is material is determined by the substantive law applicable to the case. *Anderson*, 477 U.S. at 248. “Only factual disputes that are material under the substantive law governing the case will preclude entry of summary judgment.” *Lofton v. Secretary of the Department of Children and Family*

Services, 358 F.3d 804, 809 (11th Cir. 2004). “The mere existence of some factual dispute will not defeat summary judgment unless that factual dispute is material to an issue affecting the outcome of the case.” *McCormick v. City of Fort Lauderdale*, 333 F.3d 1234, 1243 (11th Cir. 2003) (citation omitted). “[T]here must exist a conflict in substantial evidence to pose a jury question.” *Hall v. Sunjoy Indus. Group, Inc.*, 764 F.Supp.2d 1297, 1301 (M.D. Fla. 2011) (citing *Anderson, supra*).

To demonstrate a genuine dispute of material fact, the party opposing summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine [dispute] for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In cases where the evidence before the court which is admissible on its face or which can be reduced to admissible form indicates there is no genuine dispute of material fact and the party moving for summary judgment is entitled to it as a matter of law, summary judgment is proper. *Celotex*, 477 U.S. at 323–24. A court may grant summary judgment where the pleadings, evidentiary materials and affidavits before the court show there is no genuine dispute as to a requisite material fact. *Id.* To establish a genuine dispute of material fact, the nonmoving party must produce evidence such that a reasonable trier of fact could return a verdict in his favor. *Waddell v. Valley Forge Dental Associates, Inc.*, 276 F.3d 1275, 1279 (11th Cir. 2001). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version

of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

Although factual inferences must be viewed in a light most favorable to the nonmoving party and pro se complaints are entitled to liberal interpretation, a pro se litigant does not escape the burden of establishing by sufficient evidence a genuine dispute of material fact. *Beard*, 548 U.S. at 525, 126 S.Ct. at 2576; *Brown v. Crawford*, 906 F.2d 667, 670 (11th Cir. 1990). Thus, Oliver’s pro se status alone does not mandate this court’s disregard of elementary principles of production and proof in a civil case.

The court has undertaken a thorough and exhaustive review of all the evidence contained in the record. After such review, the court finds that Oliver has failed to demonstrate a genuine dispute of material fact in order to preclude entry of summary judgment in favor of the defendants.

III. DISCUSSION

A. Absolute Immunity

To the extent that Oliver lodges claims against the defendants in their official capacities and seeks monetary damages, the defendants are entitled to absolute immunity. Official capacity lawsuits are “in all respects other than name, ... treated as a suit against the entity.” *Kentucky v. Graham*, 473 U. S. 159, 166 (1985).

“[T]he Eleventh Amendment prohibits federal courts from entertaining suits by private parties against States and their agencies [or employees].” *Alabama v. Pugh*, 438 U.S. 781, 781, 98 S.Ct. 3057, 57 L.Ed.2d 1114 (1978). There are two exceptions to this prohibition: where the state has waived its immunity or where Congress has abrogated that immunity. *Virginia Office*

for Prot. & Advocacy v. Stewart, 563 U.S. 247, 131 S.Ct. 1632, 1637–38, 179 L.Ed.2d 675 (2011). “A State’s consent to suit must be ‘unequivocally expressed’ in the text of [a] relevant statute.” *Sossamon v. Texas*, 563 U.S. 277, 131 S.Ct. 1651, 1658, 179 L.Ed.2d 700 (2011) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984)). “Waiver may not be implied.” *Id.* Likewise, “Congress’ intent to abrogate the States’ immunity from suit must be obvious from ‘a clear legislative statement.’” *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 55, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996) (quoting *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 786, 111 S.Ct. 2578, 115 L.Ed.2d 686 (1991)).

Selensky v. Alabama, 619 F. App’x 846, 848–49 (11th Cir. 2015). Thus, a state official may not be sued in his official capacity unless the state has waived its Eleventh Amendment immunity, *see Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100 (1984), or Congress has abrogated the State’s immunity, *see Seminole Tribe v. Florida*, 517 U.S. 44, 59 (1996).

Neither waiver nor abrogation applies here. The Alabama Constitution states that “the State of Alabama shall never be made a defendant in any court of law or equity.” Ala. Const. art. I, § 14. The Supreme Court has recognized that this prohibits Alabama from waiving its immunity from suit. *Pugh*, 438 U.S. at 782, 98 S.Ct. 3057 (citing Ala. Const. art. I, § 14.)

Selensky, 619 F. App’x at 849. “Alabama has not waived its Eleventh Amendment immunity in § 1983 cases, nor has Congress abated it.” *Holmes v. Hale*, 701 F. App’x 751, 753 (11th Cir. 2017) (citing *Carr v. City of Florence, Ala.*, 916 F.2d 1521, 1525 (11th Cir. 1990)). In light of the foregoing, the defendants are entitled to sovereign immunity under the Eleventh Amendment for claims seeking monetary damages from them in their official capacities. *Selensky*, 619 F. App’x at 849; *Harbert Int’l, Inc. v. James*, 157 F.3d 1271, 1277 (11th Cir. 1998) (holding that state officials sued in their official capacities are protected from suit for damages under the Eleventh Amendment); *Edwards v. Wallace*

Community College, 49 F.3d 1517, 1524 (11th Cir. 1995) (holding that damages are unavailable from state official sued in his official capacity).

B. Due Process

On September 30, 2015, defendant Thomas initiated disciplinary action against Oliver for a violation of Rule 528 — unauthorized possession of a phone. Doc. 12-1 at 3, ¶3. Defendant Thomas charged that on this date “one (1) cellular telephone with no serial number ... was found and confiscated by Officer Dejour Knight from under [Oliver’s] mattress ... during an Institutional Shakedown by the CERT Team Members.” Doc. 12-1 at 3, ¶4. Officer Angela Foster served Oliver with notice of the disciplinary charge and the scheduled date for the disciplinary hearing related to this charge. Doc. 12-1 at 3, ¶5. Oliver refused to sign the document acknowledging receipt of service of the disciplinary but did identify three inmate witnesses to be called at the disciplinary hearing. Doc. 12-1 at 3, ¶¶5–7.

During the disciplinary hearing, defendant Laseter provided Oliver the opportunity to question defendant Thomas, call witnesses and provide testimony on his own behalf. Doc. 12-1 at 3–4. Oliver and two of his witnesses testified that Oliver did not own a cell phone. Doc. 12-1 at 3–4, ¶14 & ¶14(a). Oliver’s final witness testified that he put the phone under the mattress. Doc. 12-1 at 4, ¶14(a). Defendant Thomas, however, testified that during a search of Oliver’s living area Officer Knight retrieved a cell phone from underneath Oliver’s bed. Doc. 12-1 at 3, ¶13.

Upon completion of the noticed disciplinary hearing and after considering all of the testimony, defendant Laseter adjudged Oliver guilty of the charged offense. Doc. 12-1 at 4, ¶17. Laseter found that on September 30, 2015 Oliver was in “unauthorized possession of a phone[.]” Doc. 12-1 at 4, ¶17. Defendant Laseter advised that she based her findings of fact on the sworn testimony of the arresting officer. Doc. 12-1 at 4, ¶18. The sanctions imposed upon Oliver for this disciplinary infraction consisted of confinement in disciplinary segregation for thirty days; loss of outside, canteen, telephone and visitation privileges for thirty days; and assessment of \$25.00 in financial compensation. Doc. 12-1 at 4, ¶ 20.

Oliver contends that the disciplinary action violated his rights to due process because the arresting officer’s testimony constituted “only ‘hearsay testimony’ ... and this failed to meet [the] ‘some evidence’ standard and, therefore, [was] insufficient to support a determination of guilt.” Doc. 1 at 5.³

1. Assessment of Financial Compensation. The assessment of financial compensation as a result of the disciplinary action fails to implicate the due process protection afforded by the Constitution as “an unauthorized intentional deprivation of

³At a prison disciplinary hearing, the requirements of due process are satisfied if “some evidence” supports the decision of the disciplinary hearing officer. *Superintendent v. Hill*, 472 U.S. 445, 454 (1985). The law is well-settled that it is not the function of a federal court to assume the task of retrying prison disciplinary disputes, and no de novo review of a hearing officer’s factual findings is required when the decision is supported by some evidence. *Smith v. Rabalais*, 659 F.2d 539, 545 (5th Cir.), *cert. denied*, 455 U.S. 992 (1982). Thus, this court must only determine whether there is any evidence in the record which supports the conclusion reached by the hearing officer. *Hill*, 472 U.S. at 455–56.

property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause ... if a meaningful postdeprivation remedy for the loss is available.” *Hudson v. Palmer*, 468 U.S. 517, 533 (1984); *Rodriguez-Mora v. Baker*, 792 F.2d 1524, 1527 (11th Cir. 1986) (holding that inmate’s claim alleging deputy marshal failed to return ring to inmate, whether due to negligence or an intentional act, provided no basis for relief as neither a negligent loss of property nor an unauthorized intentional deprivation of property constitutes a violation of due process.); *Holloway v. Walker*, 790 F.2d 1170, 1173–74 (5th Cir. 1986) (finding no breach of federally guaranteed constitutional rights, even where high level state employee intentionally engages in tortious conduct, as long as the state system as a whole provides due process).

The State of Alabama, through its Board of Adjustment, provides a meaningful post-deprivation remedy for Oliver to seek redress of the defendants’ allegedly improper taking of his funds. *Ala. Code* § 41-9-60 *et seq.* “Furthermore, the post-deprivation remedies available to the plaintiff under Alabama tort law [are] sufficient to satisfy due process.” *Radford v. Mitchem, et al.*, Civil Action No. 2:09-CV-02426-KOB-JEO (N.D. Ala. 2011) (Magistrate Judge’s Report and Recommendation - Doc. No. 24 at 8), adopted as opinion of the court October 24, 2011. Thus, the assessment of compensation did not implicate Oliver’s constitutional right to due process.⁴

⁴This court has consistently applied the holding of *Hudson* to dismiss due process claims of inmates challenging actions of state officials regarding deprivations of their property. *Jordan v. Copeland, et al.*, Civil Action No. 2:14-CV-1114-WKW-TFM (M.D. Ala. 2017); *McClellan v. Alabama*, Civil Action No. 2:11-CV-466-ID, 2011 WL 3423940 (M.D. Ala. 2011); *Flournoy v. Culver, et al.*, Civil Action No. 1:10-CV-104-ID, 2010 WL 916577 (M.D. Ala. 2010); *Malone v. Boyd, et al.*, Civil Action No. 2:09-CV-217-TMH, 2009 WL 1064903 (M.D. Ala. 2009); *Carter*

2. The Loss of Privileges. Determining whether an inmate has been “deprived of ‘liberty’ within the meaning [of the Due Process Clause] of the Fourteenth Amendment ... is often a difficult determination in the context of a prison, because prisoners have *already* been deprived of their liberty in the ordinary sense of the term.” *Bass v. Perrin*, 170 F.3d 1312, 1318 (11th Cir. 1999) (emphasis in original). The Supreme Court has nevertheless identified two circumstances in which a prisoner, an individual already deprived of his liberty in the ordinary sense, can be further deprived of his liberty such that due process is required.

The first is when a change in a prisoner’s conditions of confinement is so severe that it essentially exceeds the sentence imposed by the court. *See Sandin v. Conner*, 515 U.S. 472, 484, 115 S.Ct. 2293, 2300, 132 L.Ed.2d 418 (1995); *see, e.g., Vitek v. Jones*, 445 U.S. 480, 492-93, 100 S.Ct. 1254, 1263-64, 63 L.Ed.2d 552 (1980) (holding that a prisoner is entitled to due process prior to being transferred to a mental hospital). The second is when the state has consistently given a certain benefit to prisoners (for instance, via statute or administrative policy), and the deprivation of that benefit “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin*, 515 U.S. at 484, 115 S.Ct. at 2300; *see, e.g., Wolff v. McDonnell*, 418 U.S. 539, 558, 94 S.Ct. 2963, 2976, 41 L.Ed.2d 935 (1974) (prisoners may not be deprived of statutory “good-time credits” without due process); *cf. Dudley v. Stewart*, 724 F.2d 1493, 1497-98 (11th Cir.1984) (explaining how the state creates liberty interests). In the first situation, the liberty interest exists apart from the state; in the second situation, the liberty interest is created by the state.

Bass, 170 F.3d at 1318.

v. *Valeska, et al.*, Civil Action No. 1:08-CV-858-TMH, 2008 WL 5245618 (M.D. Ala. 2008); *Salmon v. Turner*, Civil Action No. 1:08-CV-554-TMH, 2008 WL 3286982 (M.D. Ala. 2008)

The Constitution itself does not give rise to a liberty interest in avoiding transfer to more adverse conditions of confinement. *Sandin*, 515 U.S. at 485–86. Specifically, the Court held that confinement of an inmate in disciplinary segregation for thirty days does not implicate a constitutionally protected liberty interest. *Id.*; *Hoskins v. Lenear*, 395 F.3d 372, 375 (7th Cir. 2005) (“The punishments [inmate] suffered because of his disciplinary conviction (demotion in status, segregation, and transfer) raise no due process concerns.”); *see also Meachum v. Fano*, 427 U.S. 215, 225 (1976) (holding that there is no liberty interest arising from the Due Process Clause itself when an inmate is transferred from a low to maximum security prison because “[c]onfinement in any of the State’s institutions is within the normal limits or range of custody which the conviction has authorized the State to impose.”); *Olim v. Wakinekona*, 461 U.S. 238, 245–46 (1983) (holding that a prisoner has no constitutional right to be confined in a particular institution). Moreover, an inmate in the Alabama prison system has no constitutionally protected interest in the privileges bestowed upon him or confinement in the least restrictive prison environment because the resulting restraints are not so severe that they exceed the sentence imposed upon him. *Sandin*, 515 U.S. at 485 (“Discipline by prison officials in response to a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law.”). In addition, a temporary denial of privileges does not impose an “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 484. Thus, the deprivations imposed upon Oliver based on the challenged disciplinary did not “exceed the sentence [imposed by the trial court] in such an unexpected

manner as to give rise to protection by the Due Process Clause of its own force.” *Id.* This court must therefore determine whether the actions about which Oliver complains involve the deprivation of a state-created liberty interest as defined by the standard set forth in *Sandin*.

As the Supreme Court indicated,

Sandin involved prisoners’ claims to procedural due process protection before placement in segregated confinement for 30 days, imposed as discipline for disruptive behavior. *Sandin* observed that some of our earlier cases, *Hewitt v. Helms*, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983), in particular, had employed a methodology for identifying state-created liberty interests that emphasized “the language of a particular [prison] regulation” instead of “the nature of the deprivation.” *Sandin*, 515 U.S., at 481, 115 S.Ct. 2293. In *Sandin*, we criticized this methodology as creating a disincentive for States to promulgate procedures for prison management, and as involving the federal courts in the day-to-day management of prisons. *Id.*, at 482-483, 115 S.Ct. 2293. For these reasons, we abrogated the methodology of parsing the language of particular regulations.

“[T]he search for a negative implication from mandatory language in prisoner regulations has strayed from the real concerns undergirding the liberty protected by the Due Process Clause. The time has come to return to the due process principles we believe were correctly established in and applied in *Wolff* and *Meachum*. Following *Wolff*, we recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause. But these interests will generally be limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.*, at 483-484, 115 S.Ct. 2293 (citations and footnote omitted).

After *Sandin*, it is clear that the touchstone of the inquiry into the existence of a protected, state-created liberty interest in avoiding restrictive conditions of confinement is not the language of regulations regarding those conditions but the nature of those conditions themselves “in relation to the ordinary incidents of prison life.” *Id.*, at 484, 115 S.Ct. 2293.

Wilkinson v. Austin, 545 U.S. 209, 222–23 (2005).

Oliver’s confinement in disciplinary segregation for thirty days did not deprive him of any protected liberty interest. *Sandin*, 515 U.S. at 486; *Rodgers v. Singletary*, 142 F.3d 1252, 1253 (11th Cir. 1998) (holding that confinement in segregation for two months did not deprive inmate of a constitutionally protected liberty interest).

With respect to [Plaintiff’s] loss of canteen, telephone, and visiting privileges, a liberty interest is not implicated either under the Constitution or by the State’s creation. The Court finds the Constitution does not grant an inmate a right in visitation, canteen, and telephone privileges. *See Kentucky Dep’t of Corrs. v. Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 1908, 104 L.Ed.2d 506 (1989) (finding an inmate does not have a protected interest in visitation arising from the Due Process Clause); *Overton v. Bazzetta*, 539 U.S. 126, 131, 134, 123 S.Ct. 2162, 2167, 2168, 156 L.Ed.2d 162 (2003) (upholding a two-year restriction on visitation privileges for two substance abuse violations because prison confinement requires the surrendering of liberties and privileges enjoyed by other citizens, with free association being least compatible right to prison confinement); *Charriez v. Sec’y, Fla. Dep’t of Corrs.*, 596 F. App’x 890, 894 (11th Cir. 2015) (unpublished) (finding that the one-year loss of visitation privileges did not implicate a state-created liberty interest as there was no right to unfettered visitation); *Moore v. Pemberton*, 110 F.3d 22, 23 (7th Cir. 1997) (finding no loss of liberty or property when prisoner received as part of his disciplinary punishment a two-week loss of commissary privileges); *Walker v. Loman*, CA 06–0896–WKW, 2006 WL 3327663, at *1, *3 (M.D. Ala. Nov. 15, 2006) (unpublished) (holding the 90-day loss of store, telephone and visitation privileges, recommended custody increase, and referral for possible free-world prosecution did not result in the deprivation of a liberty interest). Moreover, the Alabama courts have determined a prisoner does not have a state-created liberty interest in store, telephone, and visitation privileges. *Dumas v. State*, 675 So.2d 87, 88 (Ala.Crim.App.1995).

An inmate’s ability to visit, to shop, and to use the telephone is heavily restricted while in prison, as are most aspects of an inmate’s life. *Sandin*, 515 U.S. at 485, 115 S.Ct. at 2301. The further restriction of these privileges for a short period of time is a less severe punishment than confinement to disciplinary segregation. Such restriction is not “atypical,” nor is it a “significant hardship” under the *Sandin* analysis, and is a type of discipline

that should be expected by a prisoner as an incident to his criminal sentence. *See Id.* at 475, 485, 115 S.Ct. at 2296, 2301. Thus, [Plaintiff] does not have a liberty interest in canteen, visitation, and telephone privileges to which due process attaches.

Bass v. Wilson, et al., 2015 WL 4742473, at *5–*6 (S.D. Ala. 2015).

Applying the *Sandin* inquiry, it is clear that confinement in segregation for thirty days and temporary loss of canteen, telephone and visitation privileges “though concededly punitive, do[] not represent a dramatic departure from the basic conditions” of the sentence imposed upon Oliver. *Id.* at 485. In light of the foregoing, the court concludes that the aforementioned sanctions fail to “impose[] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 484. Based on the foregoing, due process did not attach to the disciplinary proceeding as it relates to the sanctions imposed upon Oliver, and summary judgment is therefore due to be granted in favor of the defendants.⁵

IV. CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. The defendants’ motion for summary judgment be GRANTED.

⁵Assuming *arguendo* that due process attached, Oliver’s challenge to the hearing officer’s use of hearsay testimony as the basis for her finding of guilt is without merit, as hearsay may be used in prison disciplinary hearings to establish “some evidence” of an inmate’s guilt. *Tedesco v. Secretary of Dept. of Corrections*, 190 F. App’x 752, 757 (11th Cir. 2006) (holding that prison disciplinary hearings are not criminal trials and, therefore, prisoners are “not entitled to the full panoply of rights afforded to criminal defendants, including the right of confrontation or the Federal Rules of Evidence.”); *Griffin v. Spratt*, 969 F.2d 16, 22 (3rd Cir. 1992) (noting that hearsay is allowed in prison disciplinary proceedings); *Rudd v. Sargent*, 866 F.2d 260, 262 (8th Cir. 1989) (holding that protection against hearsay does not apply in prison disciplinary proceeding and hearsay statements in officer’s report “constitute ‘some evidence’ to support the conclusion that [the inmate] committed the Rule 5A violation.”).

2. Judgment be GRANTED in favor of the defendants.
3. This case be DISMISSED with prejudice.
4. Costs be taxed against the plaintiff.

On or before **March 19, 2018**, the parties may file objections to this Recommendation. A party must specifically identify the factual findings and legal conclusions in the Recommendation to which the objection is made. Frivolous, conclusive, or general objections to the Recommendation will not be considered.

Failure to file written objections to the Magistrate Judge's findings and recommendations in accordance with the provisions of 28 U.S.C. § 636(b)(1) shall bar a party from a de novo determination by the District Court of legal and factual issues covered in the Recommendation and waives the right of the party to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. 11TH Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

Done, on this the 5th day of March, 2018.

/s/ Susan Russ Walker
Susan Russ Walker
United States Magistrate Judge